

(220 ILCS 5/16-103.1) The Public Utilities Act is amended by adding new Section 16-103.1 as follows:

Sec. 16-103.1. Electric Utility Supply Plan.

(a) Legislative Findings. Since the enactment of Article XVI of this Act in 1997, most of the State's electric utilities have sold or divested their electric generating assets. The State has a compelling interest in fostering and encouraging an effectively competitive market for electric power and energy that will enable the citizens of Illinois to receive safe, reliable, and competitively priced electric service. To this end, all consumers must benefit in an equitable and timely fashion from the lower costs for electricity that result from retail and wholesale competition. The Legislature specifically finds that those interests are best advanced when the manner in which Illinois electric utilities procure electric power and energy is fair, nondiscriminatory, and transparent to consumers, regulators, and electric suppliers. The Legislature also finds that arrangements for the purchase of electric power and energy between Illinois electric utilities and their Affiliated Interests can jeopardize the development of an effectively competitive market for those products. This new Act is intended to supplement and extend the jurisdiction of the Illinois Commerce Commission over Affiliated Interest agreements involving the purchase and sale of electric power and energy.

(b) Definitions. "Electric Utility Supply Plan" or "Supply Plan" is a report that describes in detail the generating assets and contractual supply or Brokerage Arrangements that the electric utility intends to use to meet the service needs of its customer load over the next five years. A "Brokerage Arrangement" is any contract or arrangement, or collection of contracts or arrangements, pursuant to which a person or

entity agrees, for a period of more than one month, to solicit or purchase electric power or energy on behalf of an electric utility. A “Broker” is any person or entity who enters into a Brokerage Arrangement with a utility. “Affiliated Interest” shall have the same meaning as set forth in Section 7-101(2) of the Act.

(c) Filing. On or before February 1, 2005, and every two years thereafter, each electric utility with more than 1,000,000 customers shall file a petition with the Commission that reflects and presents its Supply Plan for each of the next five years. On or before February 1, 2006, and every two years thereafter, each electric utility with less than 1,000,000 customers shall file a petition with the Commission that reflects and presents its Supply Plan for each of the next five years.

(d) Electric Utility Supply Plan. The Electric Utility Supply Plan filed under Subsection (c) shall identify (i) the circumstances prevailing in the wholesale capacity market and retail load forecast projected in the utility’s service area, (ii) the implications of those circumstances on the utility’s power procurement design and performance review for the five year period under review, including such factors as risk management, rate and financial stability, reliability, transmission adequacy, technological, financial and fuel diversity, and pricing efficiency, (iii) the electric power and energy resources or suppliers that the electric utility will utilize during the five-year period being reviewed by the Commission, (iv) the method by which the utility will solicit and procure electric power and energy during the five-year period being reviewed by the Commission , (v) the terms and conditions, as well as a short summary of the procurement process for each of the utility’s anticipated electric power and energy

purchases in excess of 100 megawatts for the next 12 months, (vi) the economic and administrative justifications for each incremental supply option, including power purchase agreements, that will be added to the prior portfolio of resources and how each incremental supply option is expected to contribute to satisfying its supply obligations those service goals and constraints, and (vii) the electric utility's compliance with its most recently approved Electric Utility Supply Plan. The electric utility shall include with its petition all supporting documentation used or referenced in developing its Supply Plan.

(e) Term of Power Purchase Agreements. The requirement in subsection (c) that an electric utility file its Supply Plan to address the succeeding five-year period shall not preclude an electric utility from entering into power purchase agreements for terms greater than five years. An electric utility may enter into a power purchase agreement for any duration, subject to the provisions of this Section and consistent with the requirements of the Act.

(f) Proceeding and Burden of Proof. After notice and hearing pursuant to the Commission's rules for contested cases, the Commission may approve or modify an Electric Utility Supply Plan provided that the utility has demonstrated by a preponderance of the evidence: (i) that it has provided for reliable and committed supply sufficient to meet its forecasted demand for the two-year period immediately following the filing date and that it has a demonstrably feasible mechanism for procuring reliable and adequate supply for the remaining three years of the forecast period; (ii) that the utility will use, and has proposed use of, a reasonably diverse group of reliable electric capacity and energy resources and suppliers; (iii) that the utility will utilize reasonable,

71 market-tested, and prudent electric supply procurement practices; (iv) that the utility's
72 Electric Utility Supply Plan reasonably promotes rate stability for consumers and is
73 designed to yield just and reasonable rates; (v) that that utility's methods for procuring
74 capacity and energy, which may include arms-length purchasing, non-discriminatory
75 bilateral contract negotiations, or transparent competitive bidding or supply auctions, or a
76 combination of these or similar procurement methods, will be competitive and unbiased
77 and will not unreasonably advantage any bidder or market participant, including affiliated
78 interests; and (vi) that the utility's Supply Plan meets the requirements of subsection (g)
79 and is consistent with the public interest.

80 (g) Brokerage and Exclusive Supply Arrangements. The Commission
81 shall not approve any Electric Utility Supply Plan in which the utility proposes to rely on
82 or use a Brokerage Arrangement to meet its electric power and energy needs unless (i)
83 the utility first provides to the Commission all documentation sufficient to demonstrate
84 the physical sources of supply upon which the Broker will rely and the contracts or
85 arrangements with those supply sources and (ii) the utility demonstrates that the
86 procurement practices of the Broker under the Brokerage Arrangement will satisfy all of
87 the requirements of an Electric Utility Supply Plan. In no event shall the Commission
88 approve an Electric Utility Supply Plan in which the utility proposes to procure all, or
89 substantially all, of the utility's electricity needs from a single supply source or through a
90 single Broker.

91 (h) Schedule and Approval. The schedule for reviewing a proposed
92 Electric Utility Supply Plan must be set to produce a Commission decision on the electric
93 utility's petition within 180 days of its filing. The Commission's order shall approve,

94 approve with modification, or reject the electric utility's proposed Supply Plan. In
95 approving any Supply Plan proposed pursuant to this Section the Commission may
96 impose such terms, conditions or requirements as, in its judgment, are necessary to
97 protect the public interest.

98 (i) Compliance with Supply Plan and Presumptions. An electric
99 utility shall not execute any contracts that do not comply with Subsections (i)(i) and (ii)
100 as set forth below. In its order approving, modifying, or rejecting the utility's proposed
101 Electric Utility Supply Plan, the Commission shall separately determine which
102 transactions comply with the Utility's most recently approved Supply Plan. The Utility
103 shall bear the burden, in the proceeding described in subsection (f) above, to demonstrate
104 (i) that the transactions comply with the utility's most recently approved Supply Plan, and
105 (ii) that any departures or deviations from the most recently approved Supply Plan are the
106 result of circumstances or events that were not reasonably foreseeable at the time that the
107 last Plan was approved, and that such departures are in the public interest. If the
108 Commission determines that any agreement or contract between an electric utility and an
109 Affiliated Interest, or any Brokerage Arrangement, does not comport with the
110 Commission's order approving the utility's Supply Plan, or with the provisions of this
111 Act, the Commission may prohibit the utility from executing the Affiliated Interest
112 contract or Brokerage Arrangement. In any proceeding before the Commission to
113 determine the reasonableness of an electric utility's proposed change to any rate, charge
114 or other classification under Article IX of the Act, the electric utility shall be entitled to a
115 presumption that any cost for electric capacity and energy which has been reviewed and

116 approved by the Commission in accordance with this Subsection, was prudently incurred
117 in providing service to public utility customers.

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